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Filed on 04.07.2006
by Shri Rupesh Shrivastava Advocate

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IN THE HIGH COURT OF JUDICATURE AT BILASPUR, (C.G.)

Cr. App.No. 497 of 2006

(Memorandum of Cr. Appeal u/s 374 (2) of Cr.P.C.) **Single Bench**

APPELLANT: (In Jail) Lagnu , aged about 49 years, s/o Biputram Lohar, R/o Village: Jogisar, P.S. Gourela, District: Bilaspur (C.G.)

-VERSUS-

RESPONDENT: State of Chhattisgarh, Through SHO, P.S. Gourela, District: Bilaspur (C.G.)

MEMORANDUM OF CRIMINAL APPEAL UNDER SECTION 374 (2) OF Cr.P.C.

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Appeal No. 497/2006

Lagnu

Vs.

State of Chhattisgarh

Post for Judgment: 03.10.2006

Sd/-
Dilip Raosaheb Deshmukh
Judge

(26)
(25)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 497/2006

Before: Hon'ble Shri **Dilip Raosaheb Deshmukh, J.**

Lagnu

Vs.

State of Chhattisgarh

Present:
Shri Gautam Khetrapal, learned Counsel for the appellant.
Shri Ashish Shukla, learned Government Advocate for the State.

J U D G M E N T

(Delivered on this 3rd day of October, 2006)

This appeal is directed against the judgment dated 27.06.2006 delivered by Shri Ramashanker Prasad, Addl. Sessions Judge, (Fast Track Court), Pendra Road in Sessions Case No. 231/2005 whereby the appellant-Lagnu was convicted under Section 304 Part-II and 201 of the I.P.C. and sentenced to rigorous imprisonment for three years and a fine of Rs.1,000/- under Section 304 Part-II of the I.P.C. and to rigorous imprisonment for six months under Section 201 of the I.P.C.

2. Briefly stated the prosecution story is that the appellant-Lagnu doubted illicit relations of Brijlal P.W.11 with his wife-Savitri Bai. Shiv Ratan P.W.1 and Ram Ratan P.W.6 are the sons of the appellant. It is alleged that on 23.05.2005 when the appellant returned from the forest, he found Brijlal and Savitri consuming liquor inside the house. This annoyed the appellant to such an extent that he assaulted Savitri Bai by a club. Seeing this, Brijlal P.W.11 ran away, leaving his shirt

behind. The quarrel aggravated. The appellant assaulted Savitri Bai with a "*Khura*" i.e. the wooden leg of the cot on the head and other parts of the body. Savitri Bai succumbed to the injuries. The appellant along with co-accused Bisahan Singh, Bir Singh and Birju with intent to cause the evidence of murder disappear, threw away the dead body of Savitri Bai inside a public well after tying her body with a heavy stone. After a week, the dead body of Savitri Bai surfaced in the well. Upon intimation Ex.P.7 being sent to Police Station Gaurela on 28.05.2005, inquest was held vide Ex.P.8 and F.I.R. was registered vide Ex.P.9 on the same day. Autopsy on the dead body was conducted by Dr. Nidhi Koram P.W.10 who found the following injuries:

(1) Lacerated wound 3 x 0.5 cm. in the middle of forehead.

(2) Lacerated wound on right occipital region 4 x 4 cm.

(3) Reddish to Black colour spot on anterior 2/3rd of right thigh.

(4) Reddish spot extending from right knee joint to below upper 2/3rd of leg.

(5) Reddish spot on right arm extending from elbow to upper 1/3rd of right fore arm posteriorly.

(6) Reddish spot below left knee joint measuring 5 x 5 cm.

(7) Reddish spot was present on right buttock measuring 5 x 5 cm.

(8) Reddish spot on left groin measuring 5 x 5 cm. from iliac crest obliquely downwards towards the buttock.

It was opined by Dr. Nidhi Koram P.W.10 that death of Savitri Bai was due to coma with asphyxia.

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3. Memorandum of the appellant was recorded on 30.05.2005 by Sub-Inspector R.R.Sharma P.W.9 vide Ex.P.5. Upon production by the appellant, one wooden "*Khura*" i.e. leg of the cot having blood like stains and a club also having blood like stains was seized from inside the haystack kept in the kitchen of the appellant, vide Ex.P.1. Blood stained soil and plain soil, scrapings of blood from the wall and plain scrapings were also seized on 29.05.2005, vide Ex.P.2. One blood stained *lungi* was seized from the appellant on 30.05.2005 vide Ex.P.3. The above mentioned articles were sent for chemical analysis to the Forensic Science Laboratory, Raipur vide memo Ex.P.23. The presence of blood was confirmed on the blood stained soil and scrapings as also on the club and the wooden "*Khura*" i.e. leg of the cot and also on the *lungi* of the appellant. One terricot full shirt belonging to Brijlal P.W.11 was also seized from the appellant on 30.05.2005. It emerged during investigation that Bisahan Singh, Bir Singh and Birju had assisted the appellant in causing disappearance of the evidence of the murder by throwing the dead body of Savitri Bai in the well after tying it to a stone. After completion of investigation, the appellant along with Bisahan Singh, Bir Singh and Birju was prosecuted under Section 302 and 201 of the I.P.C.

4. The appellant abjured the guilt and pleaded innocence and led no evidence in defence. The prosecution examined as many as 11 witnesses. Brijlal P.W.11 in whose presence the initial assault on Savitri Bai by the appellant began did not support the prosecution story and was declared hostile. Other witnesses examined by the prosecution were Shiv Ratan P.W.1 and Ram Ratan P.W.6 both sons of the appellant. Shiv Prasad P.W.2 testified to the memorandum and

seizure of articles from the appellant. Birbal P.W.3, Jayalal Singh P.W.4, Dashrathlal P.W.5 and Shyamu Tiwari P.W.8 did not support the prosecution story. Head Constable Sushil Kumar Banchhour P.W.7 proved the F.I.R. Ex.P.9. Sub-Inspector R.R.Sharma P.W.9 proved the factum of Dehati Nalishi, inquest, spot map and seizure of bloodstained soil, plain soil, bloodstained and plain scrapings and also the seizure of *lungi, lathi* and *Khura* on memorandum of the appellant. Dr. Nidhi Koram P.W.10 proved the autopsy report Ex.P.21.

5. On appreciation of evidence, the learned trial Judge acquitted Bisahan Singh, Bir Singh and Birju from the charge under Section 201 of the I.P.C. for want of evidence. The learned trial Judge held that the circumstantial evidence proved beyond doubt that the appellant had caused the death of Savitri Bai by assaulting her repeatedly by a club and thereafter by *Khura*. However, the learned trial Judge without there being any iota of material on record concluded in paragraph 21 that the appellant saw Savitri Bai consuming liquor inside the house with Brijlal and while being deprived of power of self-control on sudden and grave provocation, the appellant caused the death of Savitri Bai. Contrary to the findings in the autopsy report, the learned trial Judge in paragraph 21 also held that the appellant dealt only a single blow on the head of Savitri Bai, which caused her death. On these premises, the learned trial Judge acquitted the appellant from the charge under Section 302 I.P.C. and convicted the appellant under Section 304 Part-II and 201 of the I.P.C. and sentenced him to imprisonment and fine, as mentioned in paragraph - 1 (supra).

6. Shri Gautam Khetrapal, learned counsel for the appellant has assailed the impugned judgment on the ground that the finding recorded by the learned trial Judge was not based on any evidence on record. It was contended that the prosecution did not prove that death of Savitri Bai had occurred inside her house and that the appellant was the perpetrator of the crime. It was also contended that the recovery of incriminating articles like bloodstained clothes, *khura*, club and bloodstained soil on the memorandum of the appellant was not proved since independent witness Shamu P.W.8 and Shiv Prasad P.W.2 did not support the prosecution story. It was further contended that presence of human blood on the aforesaid articles was also not proved and the circumstantial evidence led by the prosecution was not wholly consistent with the hypothesis of guilt of the accused since the finding recorded by the learned trial Judge in paragraph 17 revealed that the needle of suspicion also pointed towards Brijlal P.W.11. On these premises, it was urged that the conviction and sentence awarded by the learned trial Judge was liable to be set aside. On the other hand, Shri Ashish Shukla, learned Government Advocate argued in support of the impugned judgment.

7. Having considered rival submissions, I have perused the record of Sessions Trial No. 231/2005 with utmost circumspection and I am of the considered opinion that the manner in which the learned trial Judge recorded medical evidence and also undertook examination of the appellant under Section 313 Cr.P.C. and gave a finding that the assault by the appellant on Savitri Bai was as a result of grave and sudden provocation while the appellant was deprived of power of self-control are perverse and it is a fit case in which the conviction of the appellant under Section 304 Part-II and 201 of the I.P.C. should be

set aside and the matter remanded to the learned trial Judge with certain directions.

8. The learned trial judge while recording the evidence of Dr. Nidhi Koram P.W.10 did not even care to record the findings of the autopsy report Ex.P.21. While recording the testimony of Dr. Nidhi Koram, the learned trial Judge did not record whether the injuries sustained by Savitri Bai were sufficient in the ordinary course of nature to cause death and were ante-mortem injuries. In a case under Section 302 I.P.C., it is the duty of the trial Judge to record the injuries noted in the post-mortem report in details and to record an opinion whether the injuries were ante-mortem and were sufficient in the ordinary course of nature to cause death. In this case, such an opinion ought to have been elicited since dead body of Savitri Bai was tied to a stone and was recovered from a well. The learned trial Judge ought to have sought medical opinion as to which of the injuries led to the death of Savitri Bai and whether they were sufficient in the ordinary course of nature to cause death. Although the learned trial Judge in paragraph 21 held that the appellant assaulted Savitri Bai by a club and then by a *Khura* only once on the head, such a finding was without any evidence and wholly contrary to the medical evidence.

9. The learned trial Judge was in complete slumber while recording medical evidence mechanically. He did not question Dr. Nidhi Koram about her opinion of death of Savitri as a result of asphyxia. It did not occur to him to question Dr. Nidhi Koram about the findings "congested" recorded in relation to lungs, trachea etc. read with the opinion of asphyxial death. He did not question Dr. Nidhi Koram as to whether Savitri Bai was alive when thrown in

the well after tying her body to a stone and whether the opinion "asphyxial death" meant that there could be a possibility that death was due to drowning in an unconscious state after as many as eight injuries were inflicted on her body. In any case, the trial Judge ought to have, during examination of Dr. Nidhi Koram P.W.10, elicited why the opinion of asphyxial death was given in this case. The learned trial Judge was in complete ignorance of these vital facets of medical jurisprudence. In both the situations mentioned above, the offence would have been one under Section 302 I.P.C. and in the latter situation, the offence under Section 201 would be non-existent.

10. The learned trial Judge relied on the testimony of Shiv Ratan P.W.1 and Ram Ratan P.W.6 to conclude in paragraph 21 that Brijlal P.W.11 was present at the house of the appellant at the time of occurrence. However, the learned trial Judge did not deem it necessary to put a question in this regard to the appellant in his examination under Section 313 Cr.P.C. It is pertinent to note that in the examination of appellant under Section 313 Cr.P.C. no question was put to the appellant regarding the nature of injuries sustained by the deceased. Examination of the accused under Section 313 Cr.P.C. is not a mere formality. A duty is cast on the Judge to put all incriminating facts and circumstances appearing in evidence to the accused and to give the accused an opportunity to offer an explanation. Regrettably the trial Judge failed in this duty.

11. It is also pertinent to note that there were as many as eight injuries on the body of the deceased, out of which, two were lacerated wounds, one on the middle of forehead and another on the right occipital region. Apart from this, other injuries on the right

thigh, right knee joint, right arm, left knee joint, right buttock and left groin which cumulatively taken together revealed the intention with which the deceased was severely beaten. The findings recorded by the learned trial Judge that while being deprived of power of self-control upon a grave and sudden provocation, the appellant had caused the death of Savitri Bai, was without any material whatsoever on record. The conduct of the appellant in throwing the dead body of Savitri in the well after tying it to a stone also ought to have been taken into consideration by the learned trial Judge. Brijlal P.W.11 had turned hostile. There is absolutely no cogent material to show that the shirt recovered from the house of the appellant belonged to Brijlal. The learned trial Judge ought to have shown the article 'shirt' to Brijlal during his examination in chief before coming to a conclusion. No explanation was offered by the appellant regarding the injuries sustained by Savitri Bai or her death. The finding that out of fear the appellant had thrown the dead body of Savitri Bai in the well was also not based on any evidence. The finding recorded by the learned trial Judge in this regard is nothing but a mere conjecture and surmise.

12. Having thus considered the evidence led by the prosecution in its entirety and in the above mentioned facts and circumstances ~~mentioned above~~, this appeal is allowed. The impugned judgment so far as it relates to the appellant is set aside and the matter is remanded to the learned Addl. Sessions Judge, Pendra Road with a direction to examine Doctor Nidhi Koram P.W.10 regarding injuries sustained by the deceased and to seek medical opinion, as directed, relating to the nature of injuries and thereafter to examine the accused on all facts emerging in the evidence against him as also the

injuries sustained by the deceased. The learned trial Judge shall thereafter give an opportunity to the prosecution and the defence of being heard and pronounce judgment, in accordance with law. The learned trial Judge shall send intimation forthwith to the concerned Superintendent of Jail about the result of this appeal.

13. Before parting with this judgment, I deem it necessary to observe that paragraph 1 of the judgment also shows that the details of the facts constituting the charge were not mentioned. In paragraph 2 of the judgment, the undisputed facts have also not been correctly mentioned. These facts were neither put to the appellant in his examination under Section 313 Cr.P.C. nor did the appellant admit these facts. The observations made by the trial Judge in paragraph 20 of the judgment show that relying upon the wholly inadmissible statement of the accused given to the Police under Section 27 of the Evidence Act, the learned trial Judge took into consideration the circumstances in which the appellant cause death of Savitri Bai under grave and sudden provocation while being deprived of self-control. The observations made in paragraph 21 are also based on no evidence. In paragraph 4 of the judgment, the defence of the appellant was also not correctly stated since the appellant did not plead that Savitri Bai had left the house and it was learnt that she had gone with Brijlal. In paragraph 15 of the judgment, the finding that in the report of the Forensic Science Laboratory presence of human blood was confirmed on bloodstained soil, scrapings from the wall, club, *Khura* and *lungi* was also wrong since the report of the F.S.L. merely confirmed the presence of blood and not human blood on the aforesaid articles. It clearly shows that the learned trial Judge was not focused to the legal material on record and drew inferences merely on his own

conjectures and surmises or upon wholly inadmissible statement. This indicates that the trial Judge also did not even understand the basic elements of judgment writing. In my considered opinion, the manner in which the trial Judge recorded medical evidence, examined the accused under Section 313 Cr.P.C. and wrote the judgment while drawing an inference of guilt of the appellant under Section 304 Part-II of the I.P.C. on mere conjectures and surmises and awarded a paltry sentence of three years show that he is in complete ignorance of even the basic elements of procedural criminal law and immature enough to hold charge of the post of Addl. Sessions Judge (F.T.C.) The Registry of this Court is directed to enter this paragraph into the A.C.R. of Shri Ramashanker Prasad, Additional Sessions Judge (Fast Track Court), Pendra Road and to place it before Hon'ble the Chief Justice with a request for being placed before the Full Court for such orders, as may be deemed necessary.

Sd/-
Dilip Raosaheb Deshmukh
Judge

03.10.2006

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